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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/699,762 | 11/03/2003 | Chadron D. Moffitt | | 4238 |

31083 7590 04/27/2005

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EXAMINER

NOVOSAD, CHRISTOPHER J

ART UNIT PAPER NUMBER

3671

DATE MAILED: 04/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | | |
|------------------------------|------------------------|--|---------------------|--|
| Office Action Summary | Application No. | | Applicant(s) | |
| | 10/699,762 | | MOFFITT, CHADRON D. | |
| | Examiner | | Art Unit | |
| | Christopher J. Novosad | | 3671 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6-8, 14-23 and 29-32 is/are rejected.
- 7) ☒ Claim(s) 4, 5, 9-13 and 24-28 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>011504</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "158" (page 8, lines 16 and 19) has been used to denote two different elements of the invention. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The abstract of the disclosure is objected to because it contains legal language, specifically "means" in line 13. Correction is required. See MPEP § 608.01(b).

The disclosure is objected to because of the following informalities:

In page 1, line 8, --now U.S. Patent No. 6,843,002 B1,-- should be inserted before "entitled".

In page 6, line 20, "left" should be corrected to --right--.

In page 6, line 21, "right" should be corrected to --left--.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2 and 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by

Woolhiser *et al.*

With regard to claim 1, Woolhiser *et al.* disclose

a blade attachment (1,3, Figs. 1-3) for an off-road vehicle 5 having a forward end, a right side, a left side, and an underside, comprising in combination:

a mounting frame (H-frame 7) having rearward and forward ends;

the rearward end of the mounting frame (H-frame 7) being pivotally connected, about a horizontal axis (pivot bar assembly 15, Figs. 1-4, 7-8), to the vehicle 5 and extending forwardly therefrom so that its forward end is positioned forwardly of the forward end (as shown in Figs. 1-4) of the vehicle 5;

the forward end of the mounting frame (H-frame 7) being selectively movable between raised and lowered positions (col. 3, lines 42-47);

a blade 3 having a right end and a left end, selectively pivotally secured about a vertical axis to the forward end of the mounting frame (each of the vertical swivel pins 201, 203, Figs. 1-4, provides a vertical pivotal axis at the forward end of the H-frame 7);

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an electrically driven motor (21, Figs. 1-4) operatively mounted on the mounting frame 7; the electrically driven motor 21 being operatively connected to the blade 7 so as to selectively pivotally move the blade between selected angular positions with respect to the mounting frame and the vehicle (col. 1, lines 32-44., col. 3, lines 60-68).

With regard to claim 2, the motor 21 of Woolhiser *et al.* is powered by the vehicle electrical system (col. 1, lines 12-16., col. 2, lines 47-51), as called for in this claim.

Regarding claims 6 and 7, Woolhiser *et al.* (col. 1, lines 45-49 and col. 9, lines 14-21) disclose that the motor is operatively connected to the blade by a clutch (as recited in claim 6) that is a slip-clutch (as recited in claim 7).

As to claim 8, the motor 21 of Woolhiser *et al.* which is powered by the electrical system of the vehicle (col. 1, lines 12-16., col. 2, lines 47-51), i.e. which uses a conventional 12-volt battery, would necessarily be a "fractional horsepower motor", as recited in the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Woolhiser *et al.* in view of Davies.

While the vehicle 5 in Woolhiser *et al.*, to which the light-weight blade apparatus 1 is mounted, includes "pick-up trucks, or other lightweight vehicles" (col. 1, lines 13-16), it is

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considered that the above examples would clearly include all-terrain vehicles or ATVS.

In any event, Davies (col. 1, lines 12-16 and 51-53) teaches that ATVS have the potential to be adapted for use with blade attachments for practical applications such as the removal of snow.

Therefore, in view of the teaching in Davies, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have mounted the blade apparatus of Woolhiser *et al.* to an all-terrain vehicle, i.e. to use an all-terrain vehicle as the vehicle 5 in Woolhiser *et al.* for the reason noted.

Double Patenting

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 3, 15-22, 23 and 29-32 rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 26, 8-15, 20 and 22-25 of prior U.S. Patent No. 6,843,002 B1. This is a double patenting rejection.

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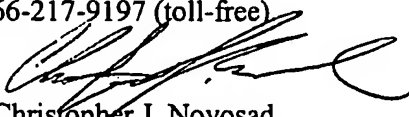
Allowable Subject Matter

Claims 4, 5, 9-13 and 24-28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher J. Novosad whose telephone number is 571-272-6993. The examiner can normally be reached on Monday-Thursday 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached at 571-272-6998. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Christopher J. Novosad
Primary Examiner
Art Unit 3671

April 25, 2005